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 and Proposed Class*

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

PORTIA MASON, individually and on
 behalf of all others similarly situated,

Plaintiff,

v.

THE FLAME BROILER, INC., a California
 corporation; and DOES 1 to 10, inclusive,

Defendants.

CASE NO.:

CLASS ACTION COMPLAINT

1. VIOLATIONS OF THE AMERICANS
 WITH DISABILITIES ACT OF 1990, 42
 U.S.C. § 12181
2. VIOLATIONS OF THE UNRUH CIVIL
 RIGHTS ACT, CALIFORNIA CIVIL
 CODE § 51

DEMAND FOR JURY TRIAL

Plaintiff Portia Mason (“Plaintiff”), individually and on behalf of all others similarly situated, brings this action based upon personal knowledge as to herself and her own acts, and as to all other matters upon information and belief, based upon, *inter alia*, the investigations of their attorneys.

NATURE OF THE ACTION

1. Plaintiff is a visually impaired and legally blind individual who requires screen-reading software to read website content using her computer. Plaintiff uses the terms “blind” or “visually impaired” to refer to all people with visual impairments who meet the legal definition of blindness in that they have a visual acuity with correction of less than or equal to 20 x 200. Some blind people who meet this definition have limited vision. Others have no vision.

2. Plaintiff, individually and on behalf of those similarly situated persons (hereafter “Class Members”) brings this Class Action to secure redress against Defendant The Flame Broiler, Inc. (hereafter “Defendant”), and DOES 1-10, for its failure to design, construct, maintain, and operate its website to be fully and equally accessible to and independently usable by Plaintiff and other blind or visually impaired individuals. Defendant’s denial of full and equal access to its website, and therefore denial of its products and services offered thereby and in conjunction with its physical location, is a violation of Plaintiff’s rights under the Americans with Disabilities Act (“ADA”) and California’s Unruh Civil Rights Act (“UCRA”).

3. Because Defendant’s website, <https://flamebroilerusa.com/> (the “website” or “Defendant’s website”), is not fully or equally accessible to blind and visually impaired consumers in violation of the ADA, Plaintiff seeks a permanent injunction to cause a change in Defendant’s corporate policies, practices, and procedures so that Defendant’s website will become and remain accessible to Plaintiff and other blind and visually impaired consumers.

THE PARTIES

4. Plaintiff, at all times relevant and as alleged herein, is a resident of California, County of Los Angeles. Plaintiff is a legally blind, visually impaired, handicapped person, and a member of a protected class of individuals under the ADA, pursuant to 42 U.S.C. § 12102(1)-(2), and the regulations implementing the ADA set forth at 28 CFR §§ 36.101 *et seq.*

5. Defendant is a California corporation with its headquarters in Santa Ana, California. Defendant’s servers for the website are in the United States. Defendant conducts a large amount of its business in California and the United States as a whole. Defendant’s restaurants constitute places of public accommodation. Defendant’s restaurants provide to the public important goods and services. Defendant’s website provides consumers access to “delicious, fast, and healthy food.” Consumers can access information regarding online ordering, Defendant’s menu, restaurant locations, Defendant’s company biography, Defendant’s charitable activities, franchising opportunities, Defendant’s social media webpages, frequently asked questions, employment opportunities, gift card details, Defendant’s nutritional guide and much more.

6. Plaintiff is unaware of the true names, identities, and capacities of each Defendant sued herein as DOES 1 to 10. Plaintiff will seek leave to amend this complaint to allege the true names and capacities of DOES 1 to 10 if and when ascertained. Plaintiff is informed and believes, and thereupon alleges, that each Defendant sued herein as a DOE is legally responsible in some manner for the events and happenings alleged herein and that each Defendant sued herein as a DOE proximately caused injuries and damages to Plaintiff as set forth below.

7. Defendant's restaurants are public accommodations within the definition of Title III of the ADA, 42 U.S.C. § 12181(7).

8. The website, <https://flamebroilerusa.com/>, is a service, privilege, or advantage of Defendant's services, products, and location.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over the state law claims alleged in this Complaint pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2)(A) because: (a) the matter in controversy exceeds the sum of \$5 million, exclusive of interest and costs; and (b) some of the class members are citizens of a state (California).

10. Defendant is subject to personal jurisdiction in this District. Defendant has been and continues to commit the acts or omissions alleged herein in the Central District of California, that caused injury, and violated rights prescribed by the ADA and UCRA, to Plaintiff and to other blind and visually impaired consumers. A substantial part of the acts and omissions giving rise to Plaintiff's claims occurred in the Central District of California. Specifically, on several separate occasions, Plaintiff has been denied the full use and enjoyment of the facilities, goods, and services of Defendant's website in Los Angeles County. The access barriers Plaintiff has encountered on Defendant's website have caused a denial of Plaintiff's full and equal access multiple times in the past and now deter Plaintiff on a regular basis from accessing Defendant's website. Similarly, the access barriers Plaintiff has encountered on Defendant's website have impeded Plaintiff's full and equal enjoyment of goods and services offered at Defendant's brick-and-mortar location.

1 11. This Court also has subject-matter jurisdiction over this action pursuant to 28
2 U.S.C. § 1331 and 42 U.S.C. § 12181, as Plaintiff's claims arise under Title III of the ADA, 42
3 U.S.C. § 12181, *et seq.*, and 28 U.S.C. § 1332.

4 12. This Court has personal jurisdiction over Defendant because it conducts and
5 continues to conduct a substantial and significant amount of business in the State of California,
6 County of Los Angeles, and because Defendant's offending website is available across California.

7 13. Venue is proper in the Central District of California pursuant to 28 U.S.C. § 1391
8 because Plaintiff resides in this District, Defendant conducts and continues to conduct a
9 substantial and significant amount of business in this District, Defendant is subject to personal
10 jurisdiction in this District, and a substantial portion of the conduct complained of herein occurred
11 in this District.

12 14. Defendant owns, operates and maintains brick-and-mortar restaurant locations in
13 the State of California. Defendant's restaurants offer goods and services to the public. Defendant
14 also offers goods and services that are offered in Defendant's places of public accommodations
15 to the public through the website. Defendant's brick-and-mortar restaurant locations and website
16 are integrated and are public accommodations pursuant to 42 U.S.C. § 12181(7).

17 **THE AMERICANS WITH DISABILITIES ACT AND THE INTERNET**

18 15. The Internet has become a significant source of information, a portal, and a tool
19 for conducting business, doing everyday activities such as shopping, learning, banking,
20 researching, as well as many other activities for sighted, blind, and visually impaired persons
21 alike.

22 16. In today's tech-savvy world, blind and visually impaired people have the ability to
23 access websites using keyboards in conjunction with screen access software that vocalizes the
24 visual information found on a computer screen. This technology is known as screen-reading
25 software. Screen-reading software is currently the only method a blind or visually impaired
26 person may use to independently access the internet. Unless websites are designed to be read by
27 screen-reading software, blind and visually impaired persons are unable to fully access websites,
28 and the information, products, and services contained thereon.

1 17. Blind and visually impaired users of Windows operating system-enabled
2 computers and devices have several screen-reading software programs available to them. Some
3 of these programs are available for purchase and other programs are available without the user
4 having to purchase the program separately. Job Access With Speech, otherwise known as
5 “JAWS,” is currently the most popular, separately purchased and downloaded screen-reading
6 software program available for a Windows computer.

7 18. For screen-reading software to function, the information on a website must be
8 capable of being rendered into text. If the website content is not capable of being rendered into
9 text, the blind or visually impaired user is unable to access the same content available to sighted
10 users.

11 19. The international website standards organization, the World Wide Web
12 Consortium, known throughout the world as W3C, has published Success Criteria for version 2.1
13 of the Web Content Accessibility Guidelines ("WCAG 2.1" hereinafter). WCAG 2.1 are well-
14 established guidelines for making websites accessible to blind and visually impaired people.
15 These guidelines are adopted, implemented, and followed by most large business entities who
16 want to ensure their websites are accessible to users of screen-reading software programs.
17 Though WCAG 2.1 has not been formally adopted as the standard for making websites accessible,
18 it is one of, if not the most, valuable resource for companies to operate, maintain, and provide a
19 website that is accessible under the ADA to the public.

20 20. Within this context, the Ninth Circuit has recognized the viability of ADA claims
21 against commercial website owners/operators with regard to the accessibility of such websites.
22 *Robles v. Domino's Pizza, LLC*, 913 F.3d 898, 906-06 (9th Cir. 2019), *cert. denied*, 140 S.Ct.
23 122, 206 L. Ed. 2d 41 (2019). This is in addition to the numerous courts that have already
24 recognized such application.

25 21. Each of Defendant's violations of the Americans with Disabilities Act is likewise
26 a violation of the Unruh Civil Rights Act. Indeed, the Unruh Civil Rights Act provides that any
27 violation of the ADA constitutes a violation of the Unruh Civil Rights Act. Cal. Civ. Code §
28 51(f).

1 22. Further, Defendant's actions and inactions denied Plaintiff full and equal access to
 2 their accommodations, facilities, and services. A substantial motivating reason for Defendant to
 3 deny Plaintiff access was the perception of Plaintiff's disability. Defendant's denial of Plaintiff's
 4 accessibility was a substantial motivating reason for Defendant's conduct. Plaintiff was harmed
 5 due to Defendant's conduct. Defendant's actions and inactions were a substantial factor in
 6 causing the lack of access to Plaintiff. Unruh Civil Rights Act, Cal. Civ. Code § 51.

7 23. Inaccessible or otherwise non-compliant websites pose significant access barriers
 8 to blind and visually impaired persons. Common barriers encountered by blind and visually
 9 impaired persons include, but are not limited to, the following:

- 10 a. A text equivalent for every non-text element is not provided;
- 11 b. Title frames with text are not provided for identification and navigation;
- 12 c. Equivalent text is not provided when using scripts;
- 13 d. Forms with the same information and functionality as for sighted persons are
 14 not provided;
- 15 e. Information about the meaning and structure of content is not conveyed by
 16 more than the visual presentation of content;
- 17 f. Text cannot be resized without assistive technology up to 200 percent without
 18 loss of content or functionality;
- 19 g. If the content enforces a time limit, the user is not able to extend, adjust or
 20 disable it;
- 21 h. Web pages do not have titles that describe the topic or purpose;
- 22 i. The purpose of each link cannot be determined from the link text alone or from
 23 the link text and its programmatically determined link context;
- 24 j. One or more keyboard operable user interface lacks a mode of operation where
 25 the keyboard focus indicator is discernible;
- 26 k. The default human language of each web page cannot be programmatically
 27 determined;
- 28 l. When a component receives focus, it may initiate a change in context;

- m. Changing the setting of a user interface component may automatically cause a change of context where the user has not been advised before using the component;
- n. Labels or instructions are not provided when content requires user input;
- o. In content which is implemented by using markup languages, elements do not have complete start and end tags, elements are not nested according to their specifications, elements may contain duplicate attributes and/or any IDs are not unique;
- p. Inaccessible Portable Document Format (PDFs); and
- q. The name and role of all User Interface elements cannot be programmatically determined; items that can be set by the user cannot be programmatically set; and/or notification of changes to these items is not available to user agents, including assistive technology.

FACTUAL BACKGROUND

24. Defendant offers the <https://flamebroilerusa.com/> website to the public. The website offers features which should allow all consumers to access the goods and services which Defendant offers in connection with its physical locations. The goods and services offered by Defendant include but are not limited to Defendant's menu, which includes items such as chicken bowls, beef bowls, half & half bowls, tofu bowls, the Works bowls, chicken plates, beef plates, half & half plates, the Works plates, rib plates, side sauces, juice, tea, and soft drinks. Consumers can also access information on the website regarding online ordering, Defendant's menu, restaurant locations, Defendant's company biography, Defendant's charitable activities, franchising opportunities, Defendant's social media webpages, frequently asked questions, employment opportunities, gift card details, Defendant's nutritional guide and much more.

25. Based on information and belief, it is Defendant's policy and practice to deny Plaintiff, along with other blind or visually impaired users, access to Defendant's website, and to therefore specifically deny the goods and services that are offered and integrated within Defendant's restaurants. Due to Defendant's failure and refusal to remove access barriers on its

1 website, Plaintiff and other visually impaired persons have been and are still being denied equal
 2 and full access to Defendant's restaurants and the numerous goods, services, and benefits offered
 3 to the public through Defendant's website.

4 **DEFENDANT'S BARRIERS ON UNRUH CIVIL RIGHTS ACT, CAL. CIV. CODE §**
 5 **51(f) DENY PLAINTIFF AND CLASS MEMBERS' ACCESS**

6 26. Plaintiff is a visually impaired and legally blind person, who cannot use a computer
 7 without the assistance of screen-reading software. However, Plaintiff is a proficient user of the
 8 JAWS or NV ACCESS screen-reader(s) as well as Mac's VoiceOver and uses it to access the
 9 internet. Plaintiff has visited <https://flamebroilerusa.com/> on several separate occasions using the
 10 JAWS and/or VoiceOver screen-readers.

11 27. During Plaintiff's numerous visits to Defendant's website, Plaintiff encountered
 12 multiple access barriers which denied Plaintiff full and equal access to the facilities, goods, and
 13 services offered to the public and made available to the public on Defendant's website. Due to
 14 the widespread access barriers Plaintiff and Class Members encountered on Defendant's website,
 15 Plaintiff and Class Members have been deterred, on a regular basis, from accessing Defendant's
 16 website. Similarly, the access barriers Plaintiff has encountered on Defendant's website have
 17 deterred Plaintiff and Class Members from visiting Defendant's physical location.

18 28. While attempting to navigate Defendant's website, Plaintiff and Class Members
 19 encountered multiple accessibility barriers for blind or visually impaired people that include, but
 20 are not limited to, the following:

- 21 a. Lack of Alternative Text ("alt-text"), or a text equivalent. Alt-text is invisible
 22 code embedded beneath a graphic or image on a website that is read to a user
 23 by a screen-reader. For graphics or images to be fully accessible for screen-
 24 reader users, it requires that alt-text be coded with each graphic or image so
 25 that screen-reading software can speak the alt-text to describe the graphic or
 26 image where a sighted user would just see the graphic or image. Alt-text does
 27 not change the visual presentation, but instead a text box shows when the
 28 cursor hovers over the graphic or image. The lack of alt-text on graphics and

images prevents screen-readers from accurately vocalizing a description of the image or graphic;

b. Empty Links that contain No Text causing the function or purpose of the link to not be presented to the user. This can introduce confusion for keyboard and screen-reader users;

c. Redundant Links where adjacent links go to the same URL address which results in additional navigation and repetition for keyboard and screen-reader users; and

d. Linked Images missing alt-text, which causes problems if an image within a link does not contain any descriptive text and that image does not have alt-text. A screen reader then has no content to present the user as to the function of the link, including information or links for and contained in PDFs.

29. Recently in 2022, Plaintiff attempted to do business with Defendant on Defendant's website and Plaintiff encountered barriers to access.

30. Despite past and recent attempts to do business with Defendant on its website, the numerous access barriers contained on the website and encountered by Plaintiff, have denied Plaintiff full and equal access to Defendant's website. Plaintiff and Class Members, as a result of the barriers on Defendant's website, continues to be deterred from accessing Defendant's website. Likewise, based on the numerous access barriers Plaintiff and Class Members have been deterred and impeded from the full and equal enjoyment of goods and services offered in Defendant's restaurants and from making purchases at such physical locations.

**DEFENDANT'S WEBSITE HAS A SUFFICIENT NEXUS TO DEFENDANT'S
RESTAURANT LOCATIONS TO SUBJECT THE WEBSITE TO THE
REQUIREMENTS OF THE AMERICANS WITH DISABILITIES ACT**

31. In the Ninth Circuit a denial of equal access to a website can support an ADA claim if the denial has prevented or impeded a visually impaired plaintiff from equal access to, or enjoyment of, the goods and services offered at the defendant's physical facilities. *See Martinez v. San Diego County Credit Union*, 50 Cal. App. 5th, 1048, 1063 (2020) (citing *Robles v.*

1 *Domino's Pizza, LLC*, 913 F.3d 898, 905-06 (9th Cir. 2019).

2 32. Defendant's website is subject to the ADA because the goods and services offered
3 on the website are an extension of the goods and services offered in Defendant's brick-and-mortar
4 restaurants. For example, the goods and the services which can be procured online are available
5 for purchase in Defendant's brick-and-mortar restaurants. Thus, since the Website "facilitate[s]
6 access to the goods and services of a place of public accommodation", the website falls within
7 the protection of the ADA because the website "connects customers to the goods and services of
8 [Defendant's] physical" restaurants. *Id.* at 905.

9 33. Defendant's website is replete with barriers, including but not limited to links and
10 images lacking alternative text, which impede Plaintiff and Class Members from accessing the
11 goods and services of Defendant's website. For example, Plaintiff who desired to order food
12 online, encountered links and images that were not announced by her screen reader. When images
13 or links lack alternative text on a website, screen reading technology will announce the image or
14 link with a generic name such as "image," "link," or "field," preventing visually impaired users
15 from experiencing the image or link as a sighted individual and making such images or links
16 unusable for users who rely on screen-readers, like Plaintiff. If Defendant had sufficiently coded
17 the buttons and links on its website to interact with screen readers, Plaintiff and Class Members
18 would have been able to navigate the webpage and complete a purchase as a sighted individual
19 could.

20 34. Accordingly, Plaintiff was denied the ability to browse Defendant's website
21 enough to complete an online order because Defendant failed to have the proper procedures in
22 place to ensure that content uploaded to the website contained the proper coding to convey the
23 meaning and structure of the website, and the goods and services provided by Defendant.

24 **DEFENDANT MUST REMOVE BARRIERS TO ITS WEBSITE**

25 35. Due to the inaccessibility of the Defendant's website, blind and visually impaired
26 customers such as Plaintiff, who need screen-readers, cannot fully and equally use or enjoy the
27 facilities and services Defendant offers to the public on its website. The access barriers Plaintiff
28 has encountered have caused a denial of Plaintiff's full and equal access in the past and now deter

1 Plaintiff on a regular basis from accessing the website.

2 36. These access barriers on Defendant's website have deterred Plaintiff from
3 enjoying the goods and services of Defendant's brick-and-mortar restaurants which are offered
4 through Defendant's website, in a full and equal manner to sighted individuals. Plaintiff and
5 Class Members did intend to visit the Defendant's locations in the near future had Plaintiff and
6 Class Members been able to access Defendant's website fully and equally.

7 37. If the website were equally accessible to all, Plaintiff and Class Members could
8 independently navigate the website and complete a desired transaction, as sighted individuals do.

9 38. Plaintiff, through Plaintiff's attempts to use the website, has actual knowledge of
10 the access barriers that make these services inaccessible and independently unusable by blind and
11 visually impaired people.

12 39. Because simple compliance with WCAG 2.1 would provide Plaintiff and Class
13 Members with equal access to the website, Plaintiff and Class Members allege that Defendant
14 engaged in acts of intentional discrimination, including, but not limited to, the following policies
15 or practices: constructing and maintaining a website that is inaccessible to visually impaired
16 individuals, including Plaintiff and Class Members; failing to construct and maintain a website
17 that is sufficiently intuitive so as to be equally accessible to visually impaired individuals,
18 including Plaintiff and Class Members; and failing to take actions to correct these access barriers
19 in the face of substantial harm and discrimination to blind and visually impaired consumers, such
20 as Plaintiff and Class Members, as a member of a protected class.

21 40. The Defendant uses standards, criteria or methods of administration that have the
22 effect of discriminating or perpetuating the discrimination against others, as alleged herein.

23 41. The ADA expressly contemplates the injunctive relief that Plaintiff
24 seeks in this action. In relevant part, the ADA requires:

25 In the case of violations of ... this title, injunctive relief shall include an
26 order to alter facilities to make such facilities readily accessible to and
27 usable by individuals with disabilities Where appropriate, injunctive
28 relief shall also include requiring the ... modification of a policy 42
U.S.C. § 12188(a)(2).

42. Because Defendant's website has never been equally accessible, and because

Defendant lacks a corporate policy that is reasonably calculated to cause the Defendant's website to become and remain accessible, Plaintiff invokes 42 U.S.C. § 12188(a)(2) and seeks a permanent injunction requiring the Defendant to retain a qualified consultant acceptable to Plaintiff to assist Defendant to comply with WCAG 2.1 guidelines for Defendant's website. The website must be accessible for individuals with disabilities who use desktop computers, laptops, tablets, and smartphones. Plaintiff and Class Members seek that this permanent injunction require Defendant to cooperate with the agreed-upon consultant to: train Defendant's employees and agents who develop the website on accessibility compliance under the WCAG 2.1 guidelines; regularly check the accessibility of the website under the WCAG 2.1 guidelines; regularly test user accessibility by blind or vision-impaired persons to ensure that the Defendant's website complies under the WCAG 2.1 guidelines; and develop an accessibility policy that is clearly disclosed on the Defendant's website, with contact information for users to report accessibility-related problems and require that any third-party vendors who participate on the Defendant's website to be fully accessible to the disabled by conforming with WCAG 2.1.

43. If Defendant's website were accessible, Plaintiff and Class Members could independently access information about the services offered and goods available for online purchase.

44. Although Defendant may currently have centralized policies regarding maintaining and operating Defendant's website, Defendant lacks a plan and policy reasonably calculated to make Defendant's website fully and equally accessible to, and independently usable by, blind and other visually impaired consumers.

45. Defendant has, upon information and belief, invested substantial sums in developing and maintaining Defendant's website, and Defendant has generated significant revenue from Defendant's website. These amounts are far greater than the associated cost of making Defendant's website equally accessible to visually impaired customers.

46. Without injunctive relief, Plaintiff and Class Members will continue to be unable to independently use Defendant's website, violating their rights.

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1 **CLASS ACTION ALLEGATIONS**

2 48. Plaintiff, on behalf of herself and all others similarly situated, seeks to certify a
3 Nationwide Class under Fed. R. Civ. P. 23(a) and 23(b)(2), the Nationwide Class is initially
4 defined as follows:

5 all legally blind individuals who have attempted to access Defendant's
6 website by the use of a screen reading software during the applicable
7 limitations period up to and including final judgment in this action.

8 49. The California Class is initially defined as follows:
9 all legally blind individuals in the State of California who have attempted
10 to access Defendant's website by the use of a screen
11 reading software during the applicable limitations period up to and
12 including final judgment in this action.

13 50. Excluded from each of the above Classes is Defendant, including any entity in
14 which Defendant has a controlling interest, is a parent or subsidiary, or which is controlled by
15 Defendant, as well as the officers, directors, affiliates, legal representatives, heirs, predecessors,
16 successors, and assigns of Defendant. Also excluded are the judge and court personnel in this
17 case and any members of their immediate families. Plaintiff reserves the right to amend the Class
18 definitions if discovery and further investigation reveal that the Classes should be expanded or
19 otherwise modified.

20 51. *Numerosity*: Fed. R. Civ. P. 23(a)(1). This action has been brought and may
21 properly be maintained as a class action against Defendant under Rules 23(b)(1)(B) and 23(b)(3)
22 of the Federal Rules of Civil Procedure. While the exact number and identities of other Class
23 Members are unknown to Plaintiff at this time, Plaintiff is informed and believes that there are
24 potentially thousands of Members in the Class. Based on the number of customers who have
25 visited Defendant's California restaurants, it is estimated that the Class is composed of more than
26 the requisite number sustaining an adequate class action. Furthermore, even if subclasses need
27 to be created for these consumers, it is estimated that each subclass would have hundreds of
28 Members. The Members of the Class are so numerous that joinder of all Members is
impracticable and the disposition of their claims in a class action rather than in individual actions
will benefit the parties and the courts.

1 52. *Typicality*: Plaintiff's and Class Members' claims are typical of the claims of the
2 Members of the Class as all Members of the Class are similarly affected by Defendant's wrongful
3 conduct, as detailed herein.

4 53. *Adequacy*: Plaintiff will fairly and adequately protect the interests of the Members
5 of the Class in that they have no interests antagonistic to those of the other Members of the Class.
6 Plaintiff has retained experienced and competent counsel.

7 54. *Superiority*: A class action is superior to other available methods for the fair and
8 efficient adjudication of this controversy. Since the damages sustained by individual Class
9 Members may be relatively small, the expense and burden of individual litigation makes it
10 impracticable for the Members of the Class to individually seek redress for the wrongful conduct
11 alleged herein. Furthermore, the adjudication of this controversy through a class action will avoid
12 the potentially inconsistent and conflicting adjudications of the claims asserted herein. There will
13 be no difficulty in the management of this action as a class action. If Class treatment of these
14 claims were not available, Defendant would likely unfairly receive thousands of dollars or more
15 in improper revenue.

16 55. *Common Questions Predominate*: Common questions of law and fact exist as to
17 all Members of the Class and predominate over any questions solely affecting individual
18 Members of the Class. Among the common questions of law and fact applicable to the Class are:

- 19 i. Whether Defendant's website, <https://flamebroilerusa.com/>, is
20 inaccessible to the visually impaired who use screen reading software to
21 access internet websites;
- 22 ii. Whether Plaintiff and Class Members have been unable to access
23 <https://flamebroilerusa.com/> through the use of screen reading software;
- 24 iii. Whether the deficiencies in Defendant's website violate the Americans
25 with Disabilities Act of 1990, 42 U.S.C. § 12181 *et seq.*;
- 26 iv. Whether the deficiencies in Defendant's website violate the California
27 Unruh Civil Rights Act, California Civil Code § 51 *et seq.*;
- 28 v. Whether, and to what extent, injunctive relief should be imposed on

Defendant to make <https://flamebroilerusa.com/> readily accessible to and usable by visually impaired individuals;

vi. Whether Plaintiff and Class Members are entitled to recover statutory damages with respect to Defendant's wrongful conduct; and

vii. Whether further legal and/or equitable relief should be granted by the Court in this action.

56. The class is readily definable, and prosecution of this action as a Class action will reduce the possibility of repetitious litigation. Plaintiff knows of no difficulty which will be encountered in the management of this litigation which would preclude their maintenance of this matter as a Class action.

57. The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to Rule 23(b)(2) are met, as Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.

58. The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to Rule 23(b)(3) are met, as questions of law or fact common to the Class predominate over any questions affecting only individual Members; and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

59. The prosecution of separate actions by Members of the Class would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Defendant. Additionally, individual actions may be dispositive of the interests of all Members of the Class, although certain Class Members are not parties to such actions.

60. Defendant's conduct is generally applicable to the Class as a whole and Plaintiff seeks, *inter alia*, equitable remedies with respect to the Class as a whole. As such, Defendant's systematic policies and practices make declaratory relief with respect to the Class as a whole appropriate.

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COUNT I**VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT, 42 U.S.C. § 12181*****ET SEQ.***

(On Behalf of Plaintiff, the Nationwide Class, and the California Class)

61. Plaintiff alleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 60, inclusive, of this Complaint as if set forth fully herein.

62. Section 302(a) of Title III of the ADA, 42 U.S.C. § 12181 *et seq.*, provides: “No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.” 42 U.S.C. § 12182(a).

63. Under Section 302(b)(2) of Title III of the ADA, unlawful discrimination also includes, among other things: “a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages or accommodations”; and “a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden.” 42 U.S.C. § 12182(b)(2)(A)(ii)-(iii). “A public accommodation shall take those steps that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the public accommodation can demonstrate that taking those steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in an undue burden, i.e., significant difficulty or expense.” 28 C.F.R. §

1 36.303(a). In order to be effective, auxiliary aids and services must be provided in accessible
2 formats, in a timely manner, and in such a way as to protect the privacy and independence of the
3 individual with a disability.” 28 C.F.R. § 36.303(c)(1)(ii).

4 64. Defendant’s locations are “public accommodations” within the meaning of 42
5 U.S.C. § 12181 *et seq.* Defendant generates millions of dollars in revenue from the sale of its
6 amenities and services, privileges, advantages, and accommodations in California through its
7 locations, related services, privileges, advantages, and accommodations, and its website,
8 <https://flamebroilerusa.com/>, is a service, privilege, advantage, and accommodation provided by
9 Defendant that is inaccessible to customers who are visually impaired like Plaintiff. This
10 inaccessibility denies visually impaired customers full and equal enjoyment of and access to the
11 facilities and services, privileges, advantages, and accommodations that Defendant makes
12 available to the non-disabled public. Defendant is violating the Americans with Disabilities Act,
13 42 U.S.C. § 12181 *et seq.*, in that Defendant denies visually impaired customers the services,
14 privileges, advantages, and accommodations provided by <https://flamebroilerusa.com/>. These
15 violations are ongoing.

16 65. Pursuant to 42 U.S.C. § 12188 and the remedies, procedures, and rights set forth
17 and incorporated therein, Plaintiff requests relief as set forth below.

18 **COUNT II**

19 **VIOLATIONS OF THE UNRUH CIVIL RIGHTS ACT, CALIFORNIA CIVIL CODE §** 20 **51 *ET SEQ.***

21 (On Behalf of Plaintiff and the California Class)

22 66. Plaintiff alleges and incorporates herein by reference each and every allegation
23 contained in paragraphs 1 through 65, inclusive, of this Complaint as if set forth fully herein.

24 67. Defendant’s locations are “business establishments” within the meaning of the
25 California Civil Code § 51 *et seq.* Defendant generates millions of dollars in revenue from the
26 sale of its services in California through its locations and related services, and
27 <https://flamebroilerusa.com/> is a service provided by Defendant that is inaccessible to customers
28 who are visually impaired like Plaintiff and Class Members. This inaccessibility denies visually

1 impaired customers full and equal access to Defendant's facilities and services that Defendant
2 makes available to the non-disabled public. Defendant is violating the Unruh Civil Rights Act,
3 California Civil Code § 51 *et seq.*, in that Defendant is denying visually impaired customers the
4 services provided by <https://flamebroilerusa.com/>. These violations are ongoing.

5 68. Defendant's actions constitute intentional discrimination against Plaintiff and
6 Class Members on the basis of a disability in violation of the Unruh Civil Rights Act, California
7 Civil Code § 51 *et seq.* in that: Defendant has constructed a website that is inaccessible to Plaintiff
8 and Class Members; maintains the website in this inaccessible form; and has failed to take
9 adequate actions to correct these barriers even after being notified of the discrimination that such
10 barriers cause.

11 69. Defendant is also violating the Unruh Civil Rights Act, California Civil Code § 51
12 *et seq.* in that the conduct alleged herein likewise constitutes a violation of various provisions of
13 the ADA, 42 U.S.C. § 12101 *et seq.* Section 51(f) of the California Civil Code provides that a
14 violation of the right of any individual under the ADA shall also constitute a violation of the
15 Unruh Civil Rights Act.

16 70. The actions of Defendant were and are in violation of the Unruh Civil Rights Act,
17 California Civil Code § 51 *et seq.*, and, therefore, Plaintiff is entitled to injunctive relief
18 remedying the discrimination.

19 71. Plaintiff and Class Members are also entitled to statutory minimum damages
20 pursuant to California Civil Code § 52 for each and every offense.

21 72. Plaintiff and Class Members are also entitled to reasonable attorneys' fees and
22 costs.

23 73. Plaintiff and Class Members are also entitled to a preliminary and permanent
24 injunction enjoining Defendant from violating the Unruh Civil Rights Act, California Civil Code
25 § 51 *et seq.*, and requiring Defendant to take the steps necessary to make
26 <https://flamebroilerusa.com/> readily accessible to and usable by visually impaired individuals.

27 PRAYER FOR RELIEF

28 WHEREFORE, Plaintiff, individually and on behalf of all Class Members, respectfully

1 requests that the Court enter judgment in her favor and against Defendant as follows:

- 2 A. For an Order certifying the Nationwide Class and California Class as defined
3 herein and appointing Plaintiff and her Counsel to represent the Nationwide Class
4 and the California Class;
- 5 B. A preliminary and permanent injunction pursuant to 42 U.S.C. § 12188(a)(1) and
6 (2) and section 52.1 of the California Civil Code enjoining Defendant from
7 violating the Unruh Civil Rights Act and ADA and requiring Defendant to take
8 the steps necessary to make <https://flamebroilerusa.com/> readily accessible to and
9 usable by visually impaired individuals;
- 10 C. An award of statutory minimum damages of \$4,000 per offense pursuant to section
11 52(a) of the California Civil Code.
- 12 D. For attorneys' fees and expenses pursuant to California Civil Code §§ 52(a),
13 52.1(h), and 42 U.S.C. § 12205;
- 14 E. For pre-judgment interest to the extent permitted by law;
- 15 F. For costs of suit; and
- 16 G. For such other and further relief as the Court deems just and proper.

17 **DEMAND FOR JURY TRIAL**

18 Plaintiff, on behalf of herself and all others similarly situated, hereby demands a jury trial
19 for all claims so triable.

20
21 Dated: June 15, 2022

Respectfully Submitted,

22 /s/ Thiago M. Coelho

23 Thiago M. Coelho

24 Binyamin I. Manoucheri

WILSHIRE LAW FIRM

Attorneys for Plaintiff and Proposed Class